



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

**By Electronic Mail and First Class Mail**

**OCT 23 2013**

Lawrence H. Norton, Esq.  
Venable LLP  
575 Seventh Street NW  
Washington, DC 20004

RE: MUR 6756  
Winning Our Future  
and Brent A. Mudd, in his official  
capacity as treasurer

Dear Mr. Norton:

On November 15, 2012, the Federal Election Commission (the "Commission") notified your clients, Winning Our Future and Brent A. Mudd, in his official capacity as treasurer (the "Committee"), of RR 12L-87 indicating that, in the normal course of carrying out its supervisory responsibilities, the Commission became aware of information indicating that the Committee may have violated the Federal Election Campaign Act of 1971, as amended (the "Act"). On September 24, 2013, the Commission opened MUR 6756 and found reason to believe that the Committee violated 2 U.S.C. §§ 434(b) and (g), and 11 C.F.R. § 104.4(c), provisions of the Act and Commission's regulations. Enclosed is the Factual and Legal Analysis that sets forth the basis for the Commission's determination.

Please note that your clients have a legal obligation to preserve all documents, records and materials relating to this matter until notified that the Commission has closed its file in this matter. See 18 U.S.C. § 1519. In the meantime, this matter will remain confidential in accordance with 2 U.S.C. § 437g(a)(4)(B) and 437g(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public.

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We look forward to your response.

On behalf of the Commission,

A handwritten signature in cursive script, reading "Ellen L. Weintraub", followed by a long horizontal flourish.

Ellen L. Weintraub  
Chair

Enclosures  
Factual and Legal Analysis

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**FEDERAL ELECTION COMMISSION**

**RESPONDENTS:** Winning Our Future and Brent A. Mudd  
in his official capacity as treasurer

## I. INTRODUCTION

## II. FACTUAL AND LEGAL ANALYSIS

An independent expenditure is an expenditure that expressly advocates the election or defeat of a clearly identified federal candidate and is not made in concert or cooperation with, or at the request or suggestion of, the candidate or his authorized committee or agent. 2 U.S.C. § 431(17). A political committee that makes or contracts to make independent expenditures aggregating \$1,000 or more after the 20th day, but more than 24 hours, before the date of an election shall file a report within 24 hours describing the expenditures. 2 U.S.C. § 434(g)(1); 11 C.F.R. § 104.4(c). These reports, known as 24-Hour Reports, must be filed with the Commission within 24 hours “following the date on which a communication that constitutes an independent expenditure is publicly distributed or otherwise publicly disseminated.” 11 C.F.R. § 104.4(c). The Committee shall file additional reports within 24 hours after each time it makes or contracts to make independent expenditures aggregating \$1,000. *Id.*

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1 review of the independent expenditures itemized on the amended report, RAD concluded that the  
2 Committee did not timely file six 24-Hour Reports for seventeen independent expenditures  
3 totaling \$1,618,146.41, *inter alia*. See Referral, Attach. 2. Accordingly, on April 25, RAD sent  
4 the Committee a Request for Additional Information ("RFAI") regarding the Committee's  
5 apparent failure to timely file the required 24-Hour reports. See April 25, 2012, RFAI,  
6 <http://images.nictusa.com/pdf/522/12330005522/12330005522.pdf#navpanes=0>.

7 On September 11, 2012, the Committee filed a Miscellaneous Form 99 ("Sept. 11 Form  
8 99") in response to the RFAI. The Committee noted that it "has to date filed reports itemizing  
9 over \$23 million in expenditures, including eighty-seven 24- and 48-hour reports"; asserted that  
10 it "met its obligation to submit information in a timely fashion"; and that vendor delays in  
11 providing necessary information contributed to the Committee's amendments. Sept. 11 Form 99,  
12 <http://images.nictusa.com/pdf/415/12952877415/12952877415.pdf#navpanes=0>.

13 RAD subsequently referred the apparent violations to OGC. OGC notified the  
14 Respondent of the referral in accordance with the Commission's policy regarding notification in  
15 non-complaint generated matters. 74 Fed. Reg. 38167 (Aug. 4, 2009). In response, the  
16 Committee acknowledges the late filings and contends that the volume of expenditures made in  
17 January and February 2012 alone, \$14.8 million, "led to miscommunications and oversights,  
18 regarding certain 24-Hour reports." Resp. at 2-3.

19 The Committee, however, argues that the Commission should dismiss the matter. The  
20 Committee asserts that it relied on vendors who were oftentimes inexperienced with the  
21 Commission's reporting rules, had a treasurer with no prior experience, and no paid employees.  
22 See Resp. at 1-3; Attach. A ¶ 2, 3. (Aff. of Brent A. Mudd). The Committee concludes therefore  
23 that these factors contributed to the Committee's reporting failures. *Id.* at 2. The Committee

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1 also notes that it took remedial action “on its own initiative.” *Id.* at 3-4. Finally, the Committee  
2 argues that its late reporting was sufficient and did not harm the electoral process because the  
3 total cost of the late filed independent expenditures represented only 10% of the Committee’s  
4 total expenditures for that period. *Id.* at 4. And despite its late filings, the Committee argues that  
5 timely disclosure “would not have materially added to or altered the public’s understanding of  
6 the activities of this Committee” because its expenditures were widely reported in local and  
7 national publications. *Id.* at 5.

8 The Commission does not find these arguments compelling, given the significant amount  
9 of spending that was not disclosed until after the relevant primary. As set forth in the Referral  
10 and acknowledged by the Committee, the Committee failed to timely file six 24-Hour Reports  
11 totaling \$1,618,146.41 to support seventeen independent expenditures made in support of, or  
12 opposition to, two federal candidates, as required by 2 U.S.C. § 434(g)(1) and 11 C.F.R.  
13 § 104.4(c). Referral at 1. Accordingly, the Commission finds reason to believe that Winning  
14 Our Future and Brent A. Mudd in his official capacity as treasurer violated 2 U.S.C. § 434(g)(1)  
15 and 11 C.F.R. § 104.4(c).

16 **B. Failure to Disclose Disbursements**

17 As discussed above, the Committee amended its 2012 February Monthly Report on  
18 March 20; the amendment disclosed \$140,930.10 that was not disclosed on the original report.  
19 Referral at 3. Also on March 20, the Committee timely filed its 2012 March Monthly Report;  
20 the Committee subsequently amended that report on April 5. The Amended 2012 March  
21 Monthly Report disclosed \$22,500 in disbursements that were not disclosed on the original  
22 report. *Id.* at 4. Under the Act and Commission regulations, political committees must disclose

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1 their disbursements, including independent expenditures. *See* 2 U.S.C. § 434(b)(4)(H)(iii);  
2 11 C.F.R. § 104.3(b)(1)(vii).

3 On August 7, 2012, RAD sent the Committee an RFAI detailing the increased  
4 disbursements on the amended February and March monthly reports and requesting clarification  
5 regarding the increases. *See* Aug. 7, 2012, RFAI,

6 <http://images.nictusa.com/pdf/429/12330010429/12330010429.pdf>. On its Sept. 11 Form 99, the  
7 Committee responded that the bulk of the disbursements reported on the Amended 2012  
8 February and March Monthly reports had been disclosed in amended 24-Hour or 48-Hour  
9 Reports. *See* Sept. 11 Form 99,

10 <http://images.nictusa.com/pdf/415/12952877415/12952877415.pdf#navpanes=0>; Referral at 5.

11 The Committee explained that vendor error resulted in the Committee receiving an invoice for a  
12 late January expenditure totaling \$36,650.10, after the February monthly filing deadline and that  
13 the volume of its expenditures and vendor delays resulted in delayed reporting. *Id.* RAD  
14 subsequently referred the matter to OGC. The Committee's Response to the notification of the  
15 referral, *see infra* at 2-3, does not specifically address this portion of the referral.

16 In sum, the Committee filed an Amended 2012 February Monthly Report disclosing  
17 \$9,360,569.68 in independent expenditures, compared to \$9,219,639.58 in independent  
18 expenditures on its original 2012 February Monthly Report. The Committee also filed an  
19 Amended 2012 March Monthly Report disclosing \$5,461,894.81 in independent expenditures,  
20 compared to \$5,439,394.81 in independent expenditures on its original 2012 March Monthly  
21 Report. The combined total increase for the Amended 2012 February and March Monthly  
22 Reports is \$163,430.10.

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1. Accordingly, the Commission finds reason to believe that Winning Our Future and Brent
2. A. Mudd in his official capacity as treasurer violated 2 U.S.C. § 434(b)(4).

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